

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Case No. 1:20-cr-129

Plaintiff,

vs.

DEFENDANT’S SENTENCING
MEMORANDUM

HJALMER SPOTTED BEAR,

Defendant.

Defendant, Hjalmer Spotted Bear, through his counsel of record, Assistant Federal Public Defender Edward Werner, respectfully submits this sentencing memorandum. A sentencing hearing is scheduled for May 11, 2021.

The defense requests the Court to consider a moderate downward variance from the applicable sentencing guideline range. The defense recommends a 14-month sentence to the Bureau of Prisons, to be followed by a two-year term of supervised release.

The defense agrees with the sentencing guideline calculation in the PSIR. The applicable sentencing range is 18-24 months. The total offense level is 11. Hjalmer’s criminal history category is IV.

Hjalmer’s initial appearance in this case occurred on August 7, 2020. Hjalmer was in tribal custody from March 2020 to August 2020 due to his conduct in this case, and at least one unrelated tribal case that appears to be unresolved. The instant offense occurred at the New Town jail in March 2020, after he was already in tribal custody. Hjalmer requests the Court to factor in this prior period of incarceration when determining sentence in the current case.

The defense also notes that Judge Hochhalter ordered Hjalmer to be released to the custody of the North Dakota State Hospital in Jamestown on August 11, 2020. Hjalmer remained at the State Hospital until September 11, 2020. He was then returned to federal custody. The defense is compelled to believe that the BOP will not give Hjalmer credit for time served for this month-long period. If that is indeed the case, the BOP will presumably give Hjalmer credit for just over eight months of time as of the sentencing date. Hjalmer therefore requests the Court to factor in the period Hjalmer spent at the State Hospital when formulating sentence.

Hjalmer's request for a 14 month sentence is coupled with a request that he be recommended for placement at a residential re-entry center. Hjalmer does need structure as he moves back into the community. Hjalmer's prior difficulties appear to be significantly tied to his lack of a residence. While the PSIR emphasizes that Hjalmer has previously chosen a lifestyle that is not especially stable, the defense submits that Hjalmer also just needs some help to establish stability. Hjalmer is 35 years old. Now is a good time to give him an extra leg-up.

Hjalmer does not have significant work history, however in the PSIR interview he did express interest in finding work in the construction field. Further, many of the questions regarding his mental health appear to be inextricably tied to past drug use. It is fair to conclude that if Hjalmer does not use and abuse controlled substances or alcohol, he can succeed on supervised release.

A residential re-entry center is the best way to strike a proper balance of discipline and rehabilitation for Hjalmer. He therefore respectfully requests a 14-month Bureau of Prisons sentence, to be followed by two years of supervised release, with a recommendation that Hjalmer be screened for a residential re-entry center during the remaining period of his incarceration sentence.

Dated this 5th day of May 2021.

Respectfully submitted,

JASON J. TUPMAN
Federal Public Defender

By:

/s/ Edward Werner

Edward Werner

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